

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1785 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

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ABDULBHAI HAJI ISAK AAJOTHJI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1785 of 2001
MS SUBHADRA G PATEL for Petitioner No. 1
Mr. H.L. Jani, AGP for Respondent No. 1-3
MS PJ DAVAWALA for Respondent No. 4
-

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 21/06/2001

ORAL JUDGEMENT

Heard learned advocate Ms. Patel for the
petitioner and Mr. Jani, learned AGP for the respondent
State and Ms. P.J. Davawala, learned Addl. Standing

Counsel for respondent NO.4. In this petition, the petitioner has challenged the impugned order of detention dated 11th January, 2001 passed by the District Magistrate, Kachchh at Bhuj under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 ("the PBM Act" for short) The grounds of detention have been communicated to the petitioner. In this petition, the respondent State has filed affidavit in reply through one P.G. Vyas, Deputy Secretary, Food, Civil Supplies and Consumer Affairs Department, Sachivalaya, Gandhinagar and the District Magistrate, Kachchh has also filed affidavit in reply. Respondent NO.4 has also filed affidavit in reply.

Learned advocate Ms. Patel for the petitioner has raised various contentions but according to her, one contention is enough for setting aside the impugned order of detention. She has submitted that against the impugned order of detention, wife of the detenu had made representation to the respondent NO.2 District Magistrate on 5.2.2001 with a request that such representation may be sent to the State of Gujarat, Central Government and the Board. She has further submitted that this representation made by the wife of the petitioner was forwarded by Registered Post A.D. from Post Office, Sola, Gujarat High Court. She has produced white receipt of the post to show that such a representation was made on 5.2.2001. After making such factual submissions, she has submitted that the representation made by the petitioner before the District Magistrate has not been forwarded by the District Magistrate to the State of Gujarat or Central Government or the Board and this has adversely affected the right of the petitioner under Article 22(5) of the Constitution of India. She has relied upon the decision of this Court reported in 1994(2) GLH (UJ) page 11. She has also submitted that the impugned order of detention dated 11th January, 2001 has been approved by the State Government on 22nd January, 2001 but the State Government has not communicated this decision either to the detenu or to the wife of the detenu. According to her, in view of this development, after the order passed by the State Government approving the detention on 22nd January, 2001, the State Government has become functus officio but it was the duty of the State Government to sent representation of the detenu made through his wife to the Central Government and the Board and, therefore, not to forward such representation by the detaining authority has violated the right of the detenu under Article 22(5) of the Constitution of India and the continued detention

of the petitioner has become invalid.

Learned AGP Mr. Jani appearing for the respondent State has submitted that the detaining authority as well as the State Government both have filed the affidavit in reply. As per the averments made in para 12 of the reply at page 25, the detaining authority has submitted that the representation dated 5.2.2001 was received on 5.2.2001 and he has submitted that the Government has approved the order of detention on 22nd January, 2001 and therefore, he has submitted that once the order of detention has been approved by the State Government, then, the detaining authority has no power or authority to consider the representation of the detenu and, therefore, there is no duty cast upon the detaining authority to consider such representation. However, he has fairly admitted the position to the effect that looking to the reply para 12, this representation of the wife of the detenu dated 5.2.2001 has not been forwarded as per her request to the State Government, Central Government and the Board. This position has not been challenged or controverted by Mr. Jani, learned AGP for the State.

Learned Addl. Standing Counsel Ms. Davawala has submitted that the detaining authority has passed the impugned order of detention after considering the facts and the material on record and the impugned order of detention is legal and valid which does not require any interference by this Court.

I have considered the submissions made by the learned advocates for the parties. The fact is very much clear that the representation dated 5.2.2001 was made by the detenu through his wife with a request to forward the same to the State Government, Central Government and the Board has not been forwarded to the State Government, Central Government and the Board inspite of the fact that the impugned order of detention passed against the detenu has already been approved by the Government on 22nd January, 2001. It is also not in dispute that the decision about approval of the impugned order of detention has not been communicated to the detenu or his wife. Since such decision has not been communicated to the wife of the detenu, she was not aware of the situation that the order of detention has been approved by the State Government and now the detaining authority has become functus officio. IN view of these facts, since she was not aware of the situation, she had made representation to the District Magistrate with a request to either consider it by himself or to forward the same

to the State Government or the Central Government and the Board. IN view of these facts, the view taken by the Division Bench of this Court in case of Salim Pothiya Rehmanbhai Belia versus District Magistrate, Mehsana and others reported in 1994(2) GLH (UJ 11) required to be considered. In case of Salim Pothiya Rehmanbhai Belia, identical facts were there. Representation has been made by the detenu after the order of detention has been approved by the State Government and the detaining authority has rejected the representation without forwarding it to the State Government and, therefore, in view of such an identical facts, the division bench of this court has held as under:

"Relying on Navalshankar Ishwarlal Dave v. State of Gujarat, AIR 1994 SC 1496, it is held that the detaining authority is left with no power to consider and to reject any representation received from the detenu against his detention even if it is addressed to the detaining authority and the detaining authority has to pass on the representation to the State Government for its consideration. In the present case, it is not in dispute that the petitioner's representation, made after the State Government had confirmed the detention, was not forwarded to the State Government for its consideration on its merits. Such inaction on the part of the District Magistrate, District Mehsana vitiated the continued detention of the petitioner."

In case of Amirsad Khan and others versus ...reported in AIR 1991 SC 198, the apex court has made the following observations :

"Where the detenu made a request to the detaining authority that a representation prepared by him may be forwarded to the Central Government as well as the State Government for consideration after taking out copies thereof, it would be denial of his right to represent to the Central Government if the detaining authority as well as the State Government refused to accede to his request and omitted to forward his representation to the Central Government for consideration. Refusal to accede to his request would be wholly unreasonable and in total disregard of the right conferred on the detenu by Art. 22(5) of the Constitution read with S. 11 of the Act and the order of detention would be liable to be quashed."

In view of the aforesaid undisputed position and also in view of the aforesaid decisions, as per my view, the right of the detenu under Article 22(5) of the COnstitution of India has been adversely affected and, therefore, the impugned order of detention is required to be quashed and set aside.

For the reasons recorded hereinabove, the petition succeeds and the same is allowed. The order of detention dated 11.1.2001 is vitiated and resulted to quash and set aside. The detenu Abdulbhai Haji Ishaq Majothi who has been detained at the Sabarmati Central Prisons, Ahmedabad be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct Service is Permitted.

Dt.21.6.2001. (H.K. Rathod,J.)

Vyas